



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.12512 of 2024
Date of decision: 13th January, 2025

Gurdev Singh @ Debu

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Gagandeep Kaur, Advocate for the petitioner.

Mr. Amit Rana, Sr. Dy. Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.124 dated 02.09.2023 under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of NDPS Act added later on) registered at Police Station Kot Isse Khan, District Moga.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and a recovery of 70 loose tablets including 20 tablets of Etizolam weighing 2.60 grams planted upon him. It has been contended by the learned counsel that after the petitioner served out his sentence in some other case under the NDPS Act in February 2023, he had all along been fearing that he could yet again be involved in a false case, in which regard an application dated 10.06.2023 was also moved before the Superintendent of Police,

Moga. Learned counsel has asserted that thereafter, on the fateful day, he was alleged to have thrown transparent polythene into the fields containing the recovered contraband. Learned counsel further submits that investigation in the present case is complete and charges also stand framed, however, till date none of the 14 prosecution witnesses have been examined and hence, the petitioner deserves to be enlarged on bail, as delay in the trial has been on account of either the jail authorities not producing the petitioner before the trial Court on the different dates of hearing and on some dates co-accused, who was granted the concession of anticipatory bail, has been absenting before the trial Court concerned. It has also been submitted by the learned counsel for the petitioner that the alleged recovery of Etizolam from the petitioner even though has been falsely planted, however, assuming for the sake of arguments though not conceded, is just marginally higher than the minimum classified as commercial under the Act. In support of her contentions, learned counsel for the petitioner has placed reliance upon '***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh***' (SLP(Crl.) No.6690/2022) ***decided on 25.01.2023 and 'Rabi Prakash vs. The State of Odisha'*** 2023 LiveLaw (SC) 533. A prayer has, therefore, been made for extending the concession of bail to the petitioner, as his further incarceration would serve no useful purpose.

3. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Davinderjit Singh, has not disputed the custody period of the petitioner. He, on further instructions, has submitted that even charges have not

been framed till date and that as many as 14 witnesses have been cited by the prosecution. It has also not been disputed by the learned State counsel that the petitioner had no role to play in the delay in trial and that at present there is no case under the NDPS Act pending against the petitioner. The learned State counsel has also not disputed that the weight of 20 tablets of Etizolam allegedly recovered from the petitioner is 2.60 grams which is just 0.10 gram more than the minimum classified as commercial under the NDPS Act.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. Hon'ble the Supreme Court in '***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh***' (SLP(Crl.) No.6690/2022) decided on **25.01.2023** has observed as under:-

".... It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed."

6. In the facts and circumstances as enumerated hereinabove and the observations made by Hon'ble the Supreme Court in ***Dheeraj Kumar Shukla's case (ibid)***, this Court deems it fit to extend the concession of bail to the petitioner. The petition as such is allowed and the petitioner is admitted to bail to the satisfaction of the trial

Court/Duty Magistrate. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

7. Needless to add here, in case the petitioner misuses the concession of bail, the State would be at liberty to approach this Court for cancellation of bail in the instant case.

(MANJARI NEHRU KAUL)
JUDGE

January 13, 2025

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No